

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

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WFP TOWER B CO. L.P.,

**SUMMONS**

Plaintiff,

Index No. /2019

- against -

Date Purchased: May 9, 2019

D'AMATO &amp; LYNCH, LLP,

Defendant.

Plaintiff designates New York County  
as the place of trial  
pursuant to CPLR 501, 503 and 509.

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*TO THE ABOVE NAMED DEFENDANT*

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer upon the plaintiff's undersigned attorneys not later than 20 days after the date of service of this summons, exclusive of the day of service, or within 30 days after service is complete if this summons is not personally delivered to you within the State of New York. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: New York, NY  
May 9, 2019

**GREENBERG TRAURIG, LLP**  
*Attorneys for Plaintiff*  
200 Park Avenue  
New York, NY 10166  
212-801-9200

By:

  
Daniel J. Ansell, Esq.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

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WFP TOWER B CO. L.P.,

COMPLAINT

Plaintiff,

Index No.

/2019

– against –

D'AMATO & LYNCH, LLP,

Defendant.

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Plaintiff WFP TOWER B CO L.P. ("Plaintiff"), by its attorneys, Greenberg Traurig, LLP, for its complaint against defendant D'AMATO & LYNCH, LLP ("Defendant"), alleges as follows.

STATEMENT OF FACTS

1. Plaintiff is a New York limited partnership.
2. Upon information and belief, Defendant is a New York limited liability partnership.
3. By Lease dated as of December 14, 2012 (as thereafter modified and amended, the "Lease"), between landlord Plaintiff and tenant Defendant, Defendant leased commercial premises comprised of the entire rentable area of the 30<sup>th</sup> floor (the "Premises") in the building known as and located at 225 Liberty Street f/k/a Two World Financial Center, New York, NY 10281, for a term expiring December 31, 2021 (the "Expiration Date").
4. Defendant failed to pay Rent due to Plaintiff pursuant to the Lease.\*

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\* Capitalized terms not defined herein shall have the meanings ascribed to them in the Lease.

5. In accordance with and pursuant to the Lease and applicable law, Plaintiff gave Defendant a Notice to Cure dated August 15, 2018 (the “**Default Notice**”), requiring Defendant to cure its Lease default by paying the Rent arrears then due to Plaintiff on or before August 27, 2018 (the “**Cure Date**”).

6. Defendant failed to cure its Lease default on or before the Cure Date as required by the Default Notice.

7. In accordance with and pursuant to the Lease and applicable law, Plaintiff gave Defendant a Termination Notice dated September 21, 2018, terminating the Lease’s term on October 1, 2018 (the “**Termination Date**”).

8. Following the Termination Date, Plaintiff commenced a holdover summary proceeding against Defendant entitled *WFP Tower B Co. L.P. v. D’Amato & Lynch, LLP*, Civ. Ct. N.Y. Co., Index No. L&T 073778/2018 (the “**Holdover Proceeding**”).

9. Upon information and belief, Defendant ceased conducting business in and from the Premises, and vacated and abandoned the Premises, on February 28, 2019 (the “**Vacate Date**”).

10. The Holdover Proceeding was settled by Amended & Restated Stipulation of Settlement dated April 12, 2019, and “so-ordered” by Civil Court on April 15, 2019 (the “**Holdover Stipulation**”).

11. Pursuant to the Holdover Stipulation, Defendant: (a) acknowledged and agreed that the term of the Lease and all right, title and interest Defendant had in and to the Premises had been terminated; (b) warranted and represented that it vacated the Premises on February 28, 2019; (c) waived and released to Plaintiff all rights Defendant had or might have had with respect to the Premises and all alterations, installations, additions, improvements and property

remaining therein; and (d) agreed that Plaintiff was entitled to re-enter the Premises and take physical and legal possession thereof to the exclusion of all others.

12. Pursuant to the Holdover Stipulation, Plaintiff's claims for rents, use and occupancy, late charges, interest, attorneys' fees and expenses, and other monetary amounts due to Plaintiff were severed, withdrawn and discontinued without prejudice to: (a) Plaintiff's right to pursue said monetary claims, together with all other damages and amounts to which Plaintiff was entitled, in a subsequent action or proceeding; and (b) Defendant's defenses thereto.

13. The Premises have not been re-let to any new tenant.

14. Plaintiff has at all times relevant hereto complied with its obligations to Defendant pursuant to the terminated Lease and applicable law.

#### **FIRST CAUSE OF ACTION**

15. Plaintiff repeats and realleges the allegations set forth in paragraphs 1 through 14 above as if fully set forth herein.

16. Defendant is liable to Plaintiff pursuant to the terms and conditions of the terminated Lease and applicable law for all Rent due to Plaintiff for and/or during the period through the Termination Date (the "Pre-Termination Rent").

17. Defendant is liable to Plaintiff pursuant to the terms and conditions of the terminated Lease and applicable law for all Deficiency (defined by the terminated Lease as the deficiency between the Rent reserved in the Lease for the period which otherwise would have constituted the unexpired portion of the Term had the Lease not been terminated and the net amount, if any, of rents collected under any reletting of the Premises for any part of such period) due to Plaintiff for and/or during the period from the day immediately following the Termination Date through the Expiration Date.

18. As of the date hereof, the Pre-Termination Rent and Deficiency due from Defendant to Plaintiff (exclusive of additional holdover use and occupancy, late charges, interest, attorneys' fees and expenses) total \$918,592.08, which amount shall continue to increase as additional Deficiency accrues through the Expiration Date.

19. Defendant is liable to Plaintiff pursuant to the terms and conditions of the terminated Lease and applicable law for late charges due with respect to unpaid and/or belatedly paid Rent and Deficiency.

20. As of the date hereof, the late charges due from Defendant to Plaintiff with respect to unpaid and/or belatedly paid Rent and Deficiency total \$90,377.45, which amount shall continue to increase as additional Deficiency and late charges accrue through the Expiration Date.

21. Defendant is liable to Plaintiff pursuant to the terms and conditions of the terminated Lease and applicable law for additional holdover use and occupancy ("Holdover Damages") equal to: (a) 50% of the Base Rent due during the last month of the Lease's Term for the first 30 days of Defendant's holdover; (b) 75% of the Base Rent due during the last month of the Lease's Term for the second 30 days of Defendant's holdover; and (c) 100% of the Base Rent due during the last month of the Lease's Term for each month after the first 60 days of Defendant's holdover.

22. The Holdover Damages for the period from the day immediately following the Termination Date through the Vacate Date total \$734,559.66.

23. Defendant is liable to Plaintiff pursuant to the terms and conditions of the terminated Lease and applicable law for late charges due with respect to unpaid and/or belatedly paid Holdover Damages.

24. The late charges due from Defendant to Plaintiff with respect to unpaid and/or belatedly paid Holdover Damages total \$22,036.79.

25. Defendant is liable to Plaintiff pursuant to the terms and conditions of the terminated Lease and applicable law for interest on all above-described amounts due and not paid and/or belatedly paid to Plaintiff.

26. By reason of the foregoing, Plaintiff is entitled to a money judgment against Defendant in an amount to be determined by the Court not less than \$1,765,565.98 (*i.e.*, \$918,592.08 + \$90,377.45 + \$734,559.66 + \$22,036.79) due as of the date hereof plus additional subsequently accruing Deficiency and interest on all of the foregoing.

#### **SECOND CAUSE OF ACTION**

27. Plaintiff repeats and realleges the allegations set forth in paragraphs 1 through 26 above as if fully set forth herein.

28. Defendant is liable to Plaintiff pursuant to the terms and conditions of the terminated Lease and applicable law for damages in the amount of the attorneys' fees, costs and expenses incurred by Plaintiff in enforcing its rights pursuant to the terminated Lease, including without limitation attorneys' fees, costs and expenses incurred by Plaintiff in the Holdover Proceeding and in this action.

29. Defendant is liable to Plaintiff pursuant to the terms and conditions of the terminated Lease and applicable law for interest on all above-described amounts due and not paid and/or belatedly paid to Plaintiff.

30. By reason of the foregoing, Plaintiff is entitled to a money judgment against Defendant in an amount to be determined by the Court.

**WHEREFORE**, Plaintiff respectfully seeks judgment as follows:

- (a) on the first cause of action, awarding Plaintiff a money judgment against Defendant in an amount to be determined by the Court not less than \$1,765,565.98 due as of the date hereof plus additional subsequently accruing Deficiency and interest on all of the foregoing;
- (b) on the second cause of action, awarding Plaintiff a money judgment against Defendant in an amount to be determined by the Court;
- (c) awarding Plaintiff additional interest and costs in accordance with the terminated Lease and applicable law; and
- (d) granting Plaintiff such other and further relief as the Court deems just and proper.

Dated: New York, NY  
May 9, 2019

**GREENBERG TRAURIG, LLP**  
*Attorneys for Plaintiff*  
200 Park Avenue  
New York, NY 10166  
212-801-9200

By: *Daniel Ansell*  
Daniel J. Ansell, Esq.

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WFP TOWER B CO. L.P.,

Plaintiff,  
- against -

D'AMATO & LYNCH, LLP,

Defendant.

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SUMMONS AND COMPLAINT

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*Attorneys for Plaintiff*

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